

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23
	)	

**JOINT COMMENTS IN RESPONSE TO  
PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION**

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May 7, 2012

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## Summary

United States Cellular Corporation, C Spire Wireless, Smith Bagley, Inc., Budget PrePay, Inc., PR Wireless, Inc., N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless and Carolina West Wireless (collectively, the “Parties”) support the Commission’s efforts to bolster accountability and eliminate waste, fraud and abuse of the Lifeline program. At the same time, the Parties agree with the filers of several petitions for reconsideration that some of the requirements adopted in the recent *Lifeline Reform Order* are unduly burdensome and/or unnecessary, that certain other regulations require clarification, and that several other regulations are contrary to good public policy.

The Parties support the various Petitioners who have recommended clarifications and/or modifications that will simplify the initial application and certification process without increasing the risk of waste, fraud and abuse. For example, the Commission should clarify that states cannot add certification requirements that are more burdensome than the certification requirements set forth in the Commission’s rules. The Commission should also clarify the appropriate documentation required to demonstrate program eligibility.

The Parties also support the various Petitioners who have recommended modification or clarifications to the rules associated with the initial determination of, and re-verification of, eligibility. For example, the Commission should identify each state that has an eligibility database available for use by ETCs and publish a definitive list updated quarterly. In addition, the Commission should not require full documentation of eligibility pending the availability of databases; instead, the Commission should continue to permit customer self-certification in the interim.

The Commission should eliminate the requirement for biennial third party audits of carriers receiving over \$5 million in annual support. Also, the Commission should modify the requirement to make specific disclosures “in *all* marketing materials related to the supported service”; instead, where full disclosure is impractical the Commission should allow carriers to include links to web pages with the required disclosures.

The Parties also support the various Petitioners who have recommended clarifications to the rules regarding activation and usage of service. For example, the Commission should clarify that certain additional acts beyond those enumerated in Rule 54.407(c)(2) constitute “usage” of Lifeline service for purposes of initial activation and continued usage.

Also, the Parties support T-Mobile’s proposal to permit eligible households to receive one full Lifeline subsidy and support for additional lines at 50% of the full subsidy level, provided that the extra support is not limited to one ETC per household.

The Parties agree with USTA that the Commission should modify the tribal reporting requirement to provide that carriers must only provide tribe-specific information to tribal governments only upon reasonable request.

Lastly, the Parties do not support reconsideration of the performance requirements for fixed and mobile broadband service to participate in the Low-Income Broadband Pilot Program. The speed benchmarks adopted in the *Lifeline Reform Order* recognize the differences among the technologies and should, therefore, be upheld.

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United States Cellular Corporation, C Spire Wireless, Smith Bagley, Inc., Budget PrePay, Inc., PR Wireless, Inc., N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless and Carolina West Wireless (collectively, the “Parties”) hereby file these Joint Comments in response to the Petitions for Reconsideration and/or Clarification filed in response to the *Lifeline Reform Order*.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The Parties commend the Commission for its tireless effort and comprehensive progress toward reforming and modernizing the Lifeline support system in the *Lifeline Reform Order*, and support the vast majority of the rules and regulations adopted in the *Lifeline Reform Order*. However, the Parties agree with many of the Petitioners that some of the regulations are unduly burdensome and/or unnecessary, that certain other regulations require clarification, and that

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<sup>1</sup> *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), 77 FR 12952 (“*Lifeline Reform Order*”) and 77 FR 12784 (“*Further NPRM*”).

several other regulations are contrary to good public policy. The Parties urge the Commission to reconsider and/or clarify such regulations, as set forth below. In addition, the Parties vigorously oppose USTA's request that the Commission reconsider the speed benchmarks adopted for the low-income broadband pilot program.<sup>2</sup>

## **II. RULES AND PROCEDURES THAT WARRANT MODIFICATION OR CLARIFICATION.**

### **A. Initial Application and Certification Process.**

The Parties support the various Petitioners who have recommended clarifications and/or modifications to the rules that will simplify the initial application and certification process without increasing the risk of waste, fraud and abuse. Specifically, the Parties support the following:

- The Commission should clarify that states cannot add certification requirements that are more burdensome than the certification requirements set forth in the Commission's rules.<sup>3</sup>
- The Commission should clarify the appropriate documentation required to demonstrate program eligibility.<sup>4</sup> Rather than providing only examples of such documentation, the Commission should issue a comprehensive list of acceptable documentation.<sup>5</sup> The Commission should also clarify that photocopies, scans, or facsimiles are acceptable.<sup>6</sup>

### **B. Initial Determination and Re-verification of Eligibility.**

The Parties support the various Petitioners who have recommended modification or clarifications to the rules that will reduce or eliminate duplicative, unnecessary or unduly burdensome tasks associated with the initial determination of, and re-verification of, eligibility. Specifically, the Parties support the following:

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<sup>2</sup> See Petition for Reconsideration and Clarification of the United States Telecom Association ("USTA Petition") at 17 – 19.

<sup>3</sup> USTA Petition at 7.

<sup>4</sup> Request for Clarification and/or Reconsideration and Initial Comments of Nexus Communications, Inc. ("Nexus Petition") at 6, USTA Petition at 10 – 11.

<sup>5</sup> Nexus Petition at 6.

<sup>6</sup> *Id.*

- The Commission should identify each state that has an eligibility database available for use by ETCs and publish a definitive list updated quarterly.<sup>7</sup> ETCs should not have to independently ascertain this information. In addition, the Commission should identify the programs for which the database has eligibility information.<sup>8</sup> Further, the Commission should confirm that for programs not covered by the relevant database, the ETC may rely on a subscriber certification.<sup>9</sup>
- The Commission should clarify that ETCs are not required to verify the identity of subscribers.<sup>10</sup>
- Carriers should not be required every 90 days to verify customers that provide “temporary addresses”.<sup>11</sup> Relief from this rule should be granted to all carriers, both wireline and wireless. The combination of the initial verification process, the annual re-verification process, and the requirement that subscribers who move to a new address notify the ETC within 30 days, provides rigorous safeguards against waste, fraud and abuse. Requiring verification every 90 days essentially requires ETCs to engage in a never-ending cycle of attempts to obtain documentation from a subset of customers that may be most in need of the Lifeline subsidy, while at the same time being the hardest to reach and the least likely to respond. The cost of compliance with this regulation will be tens of millions of dollars.<sup>12</sup> In all events, at least one of the quarterly verifications will overlap with the annual re-verification, and therefore is wholly unnecessary.
- The Commission should not require full documentation of eligibility pending the availability of databases.<sup>13</sup> Instead, the Commission should continue to permit customer self-certification.<sup>14</sup> It is burdensome for consumers to provide documentation, particularly since low-income consumers often have limited access to technology such as fax machines, copy machines, and scanners. These added burdens to consumers would result in increased non-response rates and, therefore, the de-enrollment of many low-income consumers who are qualified for Lifeline. In addition, in the absence of eligibility databases, the burden on carriers is excessive. By the FCC’s own estimates, the annual cost of reviewing income- and program-based eligibility documentation during the application process absent an eligibility database is \$160 million.<sup>15</sup> For the annual re-certification process, the FCC estimated the annual burden on carriers to be \$315

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<sup>7</sup> *Id.* at 4 – 5.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

<sup>11</sup> Petition for Reconsideration of Sprint Nextel Corporation at 2 – 6 (“Sprint Petition”), Petition for Reconsideration and Clarification of TracFone Wireless, Inc. (“TracFone Petition”) at 19 – 21, Petition for Reconsideration and Clarification of General Communication, Inc. (“GCI Petition”) at 3 – 8, USTA Petition at 2.

<sup>12</sup> See, e.g., Paperwork Reduction Act Comments of General Communication, Inc. and Smith Bagley, Inc., WC Dockets No. 12-23, 11-42 and 03-109, and CC Docket No. 96-45, filed March 23, 2012, and March 29, 2012, respectively.

<sup>13</sup> TracFone Petition at 3 – 15.

<sup>14</sup> *Id.* at 3 – 15.

<sup>15</sup> See Paperwork Reduction Act Supporting Statement at 9.

million.<sup>16</sup> This represents a cost per Lifeline customer of \$30 - \$40, compared to only \$10 - \$13 per customer where automated verification is available. In light of these increased burdens, it is imperative that the Commission ensure a glide path to an automated Lifeline eligibility verification process, by allowing customer self-certification in cases where automated verification is not yet available.

- The Commission should eliminate the requirement for retaining annual re-certification forms and providing them to USAC and the state commission if the state performs the annual re-certification function.<sup>17</sup>
- The Commission should eliminate the requirement that ETCs must receive a copy of the subscriber's certification from the state Lifeline administrator.<sup>18</sup> It should be more than sufficient for the ETC to receive notice from the state Lifeline administrator that the prospective customer meets the income- or program-eligibility criteria and has provided the state or the third-party administrator with the required certification.<sup>19</sup>
- The Commission should clarify that ETCs are not in violation of the rules where states fail, or are unable, to change automatic enrollment or other procedures not under the control of ETCs.<sup>20</sup>
- The Commission should clarify that ETCs have the option of soliciting re-certifications at any time, provided that every subscriber has been re-certified within the past 12 months, while requiring termination only if a subscriber fails to respond to the annual re-certification requirement.<sup>21</sup> Such a clarification would enable ETCs to undertake the re-certification process on a rolling basis. In addition, the Commission should confirm that ETCs collecting only federal Lifeline support are subject only to the annual FCC re-certification, and not to state re-certification requirements. Alternatively, the Commission should clarify that ETCs subject to annual, or more frequent, state re-certification requirements are not required to perform a separate re-certification for the FCC.
- The Commission should clarify that states may not adopt certification requirements in addition to those adopted by the Commission.<sup>22</sup> Without such a clarification, ETCs in many states and territories will be faced with parallel sets of certification rules that will cause extraordinary burdens in addition to the already sizable burdens imposed by the Commission's new rules. For example, an ETC might be required under existing state rules to conduct re-certifications of customers on a rolling basis each month, and many of these customers would have to be re-certified again after June 1 under the Commission's new rules. Some states have taken action to eliminate this overlap by issuing orders to

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<sup>16</sup> *See id.* at 9-10.

<sup>17</sup> USTA Petition at 5.

<sup>18</sup> *Id.* at 5 – 7.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> GCI Petition at 13 – 14.

<sup>22</sup> USTA Petition at 7.



eliminate such overlaps by revising their own rules to conform to the federal rules.<sup>23</sup> However, many have not.<sup>24</sup> To prevent undue burdens to ETCs and low-income consumers, the Commission should clarify that inconsistent certification requirements imposed at the state level are preempted by the federal rules. In the alternative, the Commission should clarify that any customers who have been re-certified prior to June 1, 2012 in compliance with state rules will be considered to be re-certified for purposes of the Commission's rules governing 2012 re-certifications.

### **C. Audit and Information Requirements.**

The Commission should eliminate the requirement for biennial third party audits of carriers receiving over \$5 million in annual support.<sup>25</sup> As GCI has noted, "the outside audit requirement is pure administrative overkill."<sup>26</sup> Carriers face their own annual audits by outside auditors, and they also face periodic audits by outside auditors hired by USAC, as well as the possibility of investigations by the FCC.<sup>27</sup> The costs of an audit are staggering.<sup>28</sup> The additional benefits of a third-party audit are minimal. In all events, the Commission should eliminate the requirement that carriers provide a draft of the audit report to the FCC and USAC.<sup>29</sup> Draft reports are just that – drafts – and will be of little or no use to the FCC or USAC. If the Commission does retain the biennial audit requirement, it should eliminate the existing – and clearly redundant – Lifeline audit regime.<sup>30</sup>

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<sup>23</sup> See, e.g., In the Matter of Staff's Motion to the Commission to Commence a Generic Proceeding to Address the Issues Concerning the Kansas Lifeline Service Program, Docket No. 10-GIMT-658-GIT (Kansas Corp. Comm'n, March 27, 2012), Order Granting Petitions for Clarification (April 30, 2012); In the Matter of Lifeline Reform, Admin. Case No. 2012-00146 (Ky. PSC, May 1, 2012).

<sup>24</sup> For example, Missouri and Puerto Rico have rules requiring full documentation of eligibility for customer re-verifications. As of this filing, neither jurisdiction has adopted an order clarifying whether full documentation will be required during the federally mandated re-verification process that must be completed by December 31, 2012.

<sup>25</sup> GCI Petition at 9 – 11.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> *Id.*

<sup>28</sup> See Paperwork Reduction Act Comments of General Communication, Inc., WC Dockets No. 12-23, 11-42 and 03-109, and CC Docket No. 96-45, filed March 23, 2012.

<sup>29</sup> GCI Petition at 11 and USTA at 9.

<sup>30</sup> See USTA Petition at 10.

#### **D. Marketing Regulations.**

The Commission should modify the requirement to “make specific disclosures in *all* marketing materials related to the supported service.”<sup>31</sup> As several Petitioners have demonstrated, the requirement to include the lengthy disclosure language in certain types of marketing media, such as newspaper, radio and television advertisements, is wholly impractical.<sup>32</sup> Further, the requirement to make these disclosures is entirely duplicative. As GCI noted, “the Commission already requires carriers to make the same disclosures to all Lifeline applicants in the required initial-eligibility paperwork.”<sup>33</sup> The disclosure language is also included in the annual re-certification form sent to all subscribers. The Parties do not object to a far less burdensome alternative: in marketing media where including the full disclosure language is impractical, ETCs should be permitted to provide a link to a website providing the full disclosures.<sup>34</sup>

#### **E. Activation and Usage.**

The Parties support the various Petitioners who have recommended clarifications to the rules regarding activation and usage of service. Specifically, the Parties support the following:

- The Commission should clarify that certain additional acts beyond those enumerated in Rule 54.407(c)(2) constitute “usage” of Lifeline service for purposes of initial activation and continued usage: *e.g.* making an attempted call, checking voicemail, sending a text message, opening a text message, checking airtime balance by dialing a pound code, downloading content to the handset or data usage.<sup>35</sup> For example, text messaging is an important form of emergency communication, as recognized by recent initiatives that allow consumers to reach public safety answering points<sup>36</sup> and

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14. <sup>31</sup> *Lifeline Reform Order* at ¶ 275 (emphasis added); *see also* Rule 54.405(c). See USTA at 13 –

<sup>32</sup> GCI Petition at 15 – 16.

<sup>33</sup> *Id.* at 16.

<sup>34</sup> USTA Petition at 13, GCI Petition at 16.

<sup>35</sup> Nexus Petition at 10, TracFone Petition at 17 – 19.

<sup>36</sup> *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, *Notice of Proposed Rulemaking*, FCC 11-134 (rel. Sept. 22, 2011). *See also* “Verizon Moves Toward 911 Texting,” THE

to be informed via text-like messages of imminent public safety threats in their areas.<sup>37</sup>

- The Commission should confirm that the rules allow for shipment of a “live” handset, so long as the carrier does not seek to collect support until the handset is “used” as defined in the rules.<sup>38</sup> It would impose a huge burden on both the carrier and the customer if the carrier were required to walk the customer through the technical activation of a handset.<sup>39</sup>
- The Commission should clarify that the requirement for ETCs to provide service initiation dates is for new subscribers only.<sup>40</sup>

#### **F. One-Per-Household Limitation.**

The Parties support T-Mobile’s proposal to permit eligible households to receive one full Lifeline subsidy and support for additional lines at 50% of the full subsidy level,<sup>41</sup> provided that the extra support is not limited to one ETC per household. It is essential that multi-person households have more than one phone. Many Lifeline phones are mobile. When the person with the mobile phone leaves their home, there may be no way for other members of the household to contact emergency services. Similarly, if two or more persons in the household are working (or looking for employment), the person without the mobile phone will not have access to telephone service. Support for additional lines must be made available to any ETC. This is especially important where the household already benefits from a Lifeline subsidy for its wireline connection, but requires a mobile phone for additional household members.

In Tribal areas, in addition to the above, the Parties urge the Commission to allow one Lifeline service per eligible adult where the household income is at or below the Federal Poverty

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HILL (May 4, 2012), available at <http://thehill.com/blogs/hillicon-valley/technology/225489-verizon-moves-towards-text-to-911>.

<sup>37</sup> “New York City Unveils First-in-the-Nation Public Safety System; Enabled Mobile Devices Will Receive Emergency Alerts at Critical Moments With Potentially Life-Saving Messages,” News Release (rel. May 10, 2011).

<sup>38</sup> Nexus Petition at 11, *see also* TracFone Petition at 19 - 21.

<sup>39</sup> Nexus Petition at 11, TracFone Petition at 20.

<sup>40</sup> USTA Petition at 8.

<sup>41</sup> T-Mobile USA, Inc. Petition for Reconsideration at 2 – 7.

Guidelines. The “one per eligible adult” solution was proposed in Smith Bagley, Inc.’s comments, and the arguments supporting that approach are incorporated herein by reference.<sup>42</sup> For eligible households above the Federal Poverty Guidelines, one additional Lifeline service at 50% of the full subsidy would be allowed.

#### **G. Tribal Rules.**

The new rules require ETCs to provide various reports to tribal governments. The Parties agree with USTA that the Commission should modify this requirement to provide that carriers must only provide tribe-specific information to tribal governments only upon reasonable request.<sup>43</sup> ETCs do not have contact information for each tribe, and there is no reason to send reports to tribes that do not want or cannot use such information.<sup>44</sup>

#### **H. Suspension of Lifeline Payments.**

The Commission should clarify that suspension of payments for alleged non-compliance applies only to Lifeline reimbursement payments, not to high-cost support.<sup>45</sup> Many Lifeline providers receive support from the High Cost program and are subject to significant compliance requirements, such as the obligation to provide service upon reasonable request and the requirement to invest support in network improvements and upgrades in accordance with service improvement plans. If an alleged violation of Lifeline requirements occurs, any resulting suspension of payment should be restricted to Lifeline payments. If such alleged violations were to result in a suspension of payment of high-cost support, this would jeopardize an ETC’s ability to comply with its separate obligations under the High Cost program rules, and harm the ability of consumers in rural areas to receive service. The suspension of Lifeline payments, along with

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<sup>42</sup> Comments of Smith Bagley, Inc. (filed Aug. 26, 2011) at 4-5); Reply Comments of Smith Bagley, Inc. (filed Sept. 2, 2011) at 4-6.

<sup>43</sup> USTA Petition at 16 – 17.

<sup>44</sup> *Id.* at 17.

<sup>45</sup> *Id.* at 15.

the potential for monetary forfeitures and revocation or suspension of ETC status, is a sufficient deterrent against violations of the Lifeline rules.

### **III. THE PARTIES OPPOSE RECONSIDERATION OF THE PERFORMANCE REQUIREMENTS ADOPTED FOR THE LOW-INCOME BROADBAND PILOT PROGRAM.**

The Commission should reject USTA's request for reconsideration of the performance requirements for fixed and mobile broadband service to participate in the Low-Income Broadband Pilot Program. In the *Lifeline Reform Order*, the Commission established speed benchmarks for 3G networks, 4G networks, and fixed services consistent with those previously adopted by the Commission in the *USF/ICC Transformation Order*.<sup>46</sup> In the latter *Order*, the Commission sensibly concluded that fixed and mobile broadband technologies may have key differences that warrant different speed benchmarks for fixed and mobile service.<sup>47</sup>

USTA's argument that the speed benchmarks violate competitive neutrality is unpersuasive. The universal service principle of competitive neutrality includes technological neutrality, which is aimed at ensuring that universal service mechanisms are not biased in favor of a particular technology:

We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we

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<sup>46</sup> *Lifeline Reform Order* at ¶ 341.

<sup>47</sup> See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) (“*USF-ICC Transformation Order*”) at n. 134, *recon.*, FCC 11-189 (rel. Dec. 23, 2011).

had interpreted universal service eligibility criteria so as to favor particular technologies.<sup>48</sup>

Using the same speed threshold for multiple technologies with divergent capabilities would provide an unfair advantage to providers using technologies that are inherently capable of higher speeds. The public is better served by encouraging carriers capable of delivering mobile broadband to participate in the auction process, increasing competition for support and the variety of services that consumers will receive. Correspondingly, the Commission will be able to assess innovative service offerings when making a determination of which pilot programs should be made permanent.

The speed benchmarks adopted in the *Lifeline Reform Order* recognize the differences among the technologies and should, therefore, be upheld.

#### **IV. CONCLUSION**

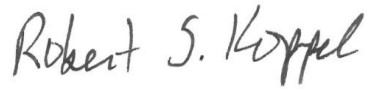
The Commission has taken important steps toward reforming and modernizing the Lifeline support system in the *Lifeline Reform Order*. The Parties support the vast majority of the rules and regulations adopted in the *Lifeline Reform Order*. The Parties urge the Commission to reconsider and/or clarify the regulations discussed above that are unduly burdensome and/or unnecessary, that are unclear, or that are contrary to good public policy. At

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<sup>48</sup> See *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8802 at ¶ 49 (1997) (“*USF First Report and Order*”).

the same time, the Parties oppose reconsideration of the speed benchmarks adopted by the Commission for the low-income broadband pilot program.

Respectfully submitted,



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May 7, 2012

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